

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

Petition of Brown Livestock
Company for Review of Order
No. 74-73, California Regional
Water Quality Control Board,
San Francisco Bay Region.

Order No. WQ 75-3

BY THE BOARD:

On May 21, 1974, the California Regional Water Quality Control Board, San Francisco Bay Region (Regional Board) adopted Order No. 74-73. Order No. 74-73 requires Brown Livestock Company (petitioner) to cease and desist from discharging or threatening to discharge waste contrary to waste discharge requirements established by the Regional Board on August 22, 1972.

On June 20, 1974, petitioner filed its petition with the State Board requesting review of Order No. 74-73 and specifically requested that the State Board withdraw said order and allow petitioner to continue operation of the feedlot according to the plan proposed in its petition.

Statement of Facts

The petitioner operates a cattle feedlot on a 288-acre ranch on Atlas Peak Road approximately five miles from downtown Napa. Approximately 4,000-5,000 cattle are fed in the lot annually. Storm runoff flows through the feed yard carrying

animal waste to a series of settling ponds. The pond system is composed of five small ponds on the eastern drainage of the property parallel to Atlas Peak Road. This drainage crosses Atlas Peak Road and flows through the Silverado Country Club. The western slopes drain into four additional small ponds that in turn drain into a large ten-acre reservoir on the western boundary of the property. This reservoir contains water year round. The outlet for the reservoir is located on adjacent property. The smaller ponds are dry during the summer months. In the past, the western ponds have overflowed during the rainy season, discharging waste to an unnamed creek tributary to Milliken Creek and subsequently to the Napa River. The beneficial uses for these receiving waters have been identified as wading, sport fishing, migratory routes for spawning steelhead and rainbow trout, agricultural water supply, and esthetic enjoyment.

The Regional Board adopted waste discharge requirements regarding petitioner's discharge on August 22, 1972, in Order No. 72-63. These requirements prohibit the discharge of waste to surface water bodies or any stream, require that waste be effectively confined to petitioner's property at all times and specify that the treatment or disposal of waste shall not create a nuisance. Compliance was to be achieved by the petitioner by August 1, 1973.

It should be noted that petitioner does not contend that the discharge of waste contrary to the above requirements,

with the exception of the nuisance requirement, did not in fact occur. The Regional Board staff report, testimony at the public hearing and comments by the Department of Fish and Game clearly show that significant discharges contrary to requirements did occur and that these discharges resulted in a significant water quality degradation of waters of the State.

Contentions and Findings

The contentions of the petitioner and our findings relative thereto are as follows:

1. The waste discharge was due to factors beyond petitioner's control and all reasonable precautions were taken by the discharger to prevent violations of requirements.

A. Storm Water Runoff

Petitioner contends that it has been "victimized by the elements in that storm water flowing through petitioner's property from the watershed beyond have sometimes carried wastes from the cattle feedlot to creek beds on adjacent property when unusually heavy rains caused the settling ponds to overflow". Petitioner's counsel noted that there is the continuing problem of the rain that comes off the hills. (RT May 21, 1974, page 17, line 28).

Manure from feedlot operations is clearly a waste pursuant to Section 13050(d) of the Water Code. Whether said waste is placed directly in waters of the State or whether it is

left in a place where it is washed into waters of the State by storm water, it is a waste discharge in either situation.

The record indicates that petitioner recognized that storm-water runoff must be controlled pursuant to applicable waste discharge requirements. (RT May 21, 1974, page 19, lines 12-20). In fact, the findings of the waste discharge requirements recognized the rainwater problem and the petitioner was given approximately one year pursuant to a time schedule to provide for containment of the discharge.

The petitioner admitted at several points during the Regional Board hearing that a storm water diversion or a separation of storm-water runoff from the feedlot area is the only real solution to the waste discharge problem. (RT May 21, 1974, page 32, lines 4-20; page 22, lines 9-10; page 29, lines 7-18). However, as this solution might involve property other than that owned by petitioner, this possibility was apparently dismissed as not being feasible by the petitioner. (RT May 21, 1974, page 29, lines 7-10). No evidence of discussions or negotiations with other property owners was introduced.

Counsel for petitioner stated at the hearing that petitioner had made "substantial investments" in the feedlot operation in order to adhere to legal requirements. (RT May 21, 1974, page 15, line 5). However, these investments were not specified nor was it stated whether these investments were for water quality control measures or for general capital improvements to the feedlot operation. Further, petitioner stated

that although it had consulted with people regarding its waste discharge problem, the talks were on an "informal basis" as it didn't want to hire a consultant and be "committed to a particular plan of action that might not be 100 percent effective". (RT May 21, 1974, page 32, lines 4-10). We are not satisfied that petitioner took all reasonable measures to control the storm-water runoff problem and find its claim that all reasonable precautions were taken to be without merit.

In any event, regardless of the measures undertaken by the petitioner, the appropriateness of the waste discharge requirements contained in Order No. 72-63 is not in question, nor is there a question that the requirements set forth are necessary to protect water quality. It is the petitioner's responsibility to meet these requirements. Factors such as those indicated by the petitioner, while they might be considered in mitigation, are not adequate to absolve petitioner from the responsibility of meeting applicable waste discharge requirements.

B. Beef Marketing Conditions

Counsel for petitioner contends in the petition and stated at the hearing that due to price controls and consumer beef boycotts, feedlots were filled longer than anticipated and a 60-day "holdback" existed in market conditions. (RT May 21, 1974, page 16, lines 1-10). However, petitioner admitted under questioning from the Regional Board that the ten-acre pond overflows every year and even if the cattle had

not been there late in the season as they were due to market conditions, the pond would have overflowed anyway. (RT May 21, 1974, page 23, lines 11-20). Consequently, we find this contention without merit.

2. An Odor Nuisance Does Not Exist

Petitioner contends in the petition and indicated at the hearing that the cease and desist action was initiated because of six complaints about odors from the feedlot operation and that an odor nuisance did not exist. A careful reading of the transcript and Regional Board records indicates that the odor nuisance question was secondary to the primary pollution issue which existed due to the waste discharge. The record does disclose, however, that a considerable number of persons were affected by offensive odors resulting from the failure to treat adequately and properly dispose of waste. Although the Regional Board staff did not conduct an odor survey in the area, eleven complaints from seven different people and communications from the Napa County Health Department are in the record.

3. The Regional Board Order Imposes Severe Financial Consequences to Petitioner.

The Regional Board considered economic factors in the adoption of petitioner's waste discharge requirements as indicated in Sections 13263(a) and 13241(d) of the Water Code. The Regional Board was not required to reexamine economic considerations in an enforcement proceeding pursuant to Water Code

Section 13301. In any event, there is no evidence in the record sufficient to support a proposition that economic considerations justify the water quality degradation occasioned by violation of requirements.

Conclusions

After review of the record, and consideration of all the contentions of the petitioner and for the reasons discussed in this order, the State Board concludes that the action of the Regional Board in adopting Order No. 74-73 was appropriate and proper.

NOW, THEREFORE, IT IS ORDERED that the petition for review of Order No. 74-73 is denied.

Dated: January 16, 1975

/s/ W. W. Adams
W. W. Adams, Chairman

/s/ Ronald B. Robie
Ronald B. Robie, Vice Chairman

/s/ Roy E. Dodson
Roy E. Dodson, Member

/s/ Mrs. Carl H. Auer
Mrs. Carl H. (Jean) Auer, Member

/s/ W. Don Maughan
W. Don Maughan, Member